decision was that the title to the wheat when destroyed was in Haxall Bros. & Co., and they were compelled to pay for it. All the wheat had been weighed at Gordonsville; and it was proved that when it left the barn of Mrs. Willis it was fully equal to the sample by which it was sold, and that twenty-five bags of the lot of which the 220 bags were the residue, were received by Haxall Bros. & Co., and paid for by them without objection to the quality.

See in accord with *Haxall v. Willis*, 2 Schoul. Pers. Prop., sec. 255, where Lord Ellenborough's rules are restated so as to permit the presumption of transfer of title except when something remains to be done by the *seller* as to goods as *yet undelivered.* And see *Turley v. Bates*, 2 H. & C. 200; *Graff v. Finch*, 58 Ill. 373 (11 Am. Rep. 85); *King v. Jarman*, 35 Ark. 190 (37 Am. Rep. 113); *Sedgwick v. Cottingham*, 54 Iowa, 512 (Pattee's Cases on Sales, 272). But see *Prescott v. Locke*, 51 N. H. 94 (12 Am. Rep. 55), where it is said: "If the sale is not complete, if anything remains to be done concerning the property by either party, a present right of property does not vest in the buyer. If any condition precedent, such as the ascertainment of the quantity, and thereby of the gross price, is not performed or waived, the sale is not complete. Such is the rule of the common law." But Schouler says: "It would appear to be the American rule that acts such as weighing and measuring, to be performed purely for the buyer's own convenience and satisfaction, do not prevent the divestment of the seller's right of property." (2 Schoul. Pers. Prop., sec. 252.) He admits, however, that the cases are in conflict.

General Deed of Assignment—Power to Trustee to Sell on Credit.—The Statute of 13 and 27 Elizabeth, known as the Statute of Fraudulent Conveyances, and existing substantially in its original form in most, if not all, of the States (Va. Code 1887, secs. 2458, 2459,) not only avoids conveyances made with intent to *defraud* creditors and purchasers, but those made with intent to "*hinder, delay* or defraud." Accordingly, it is generally held that where an insolvent debtor makes a general assignment of his effects to a trustee, for the benefit of creditors, he must not stipulate for any delay beyond what is reasonably necessary to convert the assets into cash for the payment of his debts. Giving the trustee power to sell the assets on credit *hinders and delays*, even if it does not actually *defraud*, creditors. Such a power to sell on credit is usually held, therefore, to render the assignment voidable at the suit of creditors. Burrill on Assignments, 220 *et seq.*; *Keep v. Sanderson* (Wis.), 60 Am. Dec. 404, and note; *Brahmstadt v. McWhirter* (Neb.), 31 Am. Rep. 396, and extensive note; *Rapalee v. Stewart*, 27 N. Y. 310; *Nicholson v. Leavitt*, 6 N. Y. 510 (57 Am. Dec. 499 and note).

In the case last cited, the reasons upon which this doctrine is based are well stated in the following extract from the learned opinion of the court:

"It was argued that 'an intent to hinder and delay creditors, there being no intent to defraud them, will not make an assignment illegal; a positive intent to defraud must exist.' The answer to this suggestion is that a positive intent to defraud always does exist where the inducement to the trust is to hinder and delay creditors, since the right of a creditor to receive his demand *when due* is as absolute as the right to receive it *at all.* It has always been understood that where an individual has incurred an obligation to pay money, the time of payment was an essential part of the contract; that when it arrived the law demanded an imme-

diate appropriation by the debtor, of his property, in discharge of his liability; and if he failed, would itself, by its own process, compel a performance of the duty. The debtor, by the creation of a trust, may direct the application of his property, and may devolve the duty of making the appropriation upon a trustee. This the law permits, and such delay as may be necessary for that purpose. But the debtor cannot in this way avoid the obligation of immediate payment, or extend the period of credit without the assent of the creditor. The attempt to do this, however plausible may be the pretense, is in conscience and in law a fraud, and nothing else."

In reply to the argument, upon which the decision of the lower court was based, that a court of equity might compel the trustee to sell for cash, notwithstanding he was empowered to sell on credit, the court in the same case said: "Indeed the reason assigned by the Chancellor for upholding the trust is, in substance, because the court of chancery can annul it at pleasure. I deny that courts possess any such power. If the trust is valid, the courts are bound to enforce it, and not defeat it."

It is usually held, however, that authority to sell on credit will not be implied, adversely to the assignment, from language susceptible of a different construction, which will support the assignment. Hence such clauses as the following have been held not to authorize a sale on credit, and therefore not to render the assignment invalid: "To sell and dispose of the same upon such terms and conditions as in their judgment may appear best and most for the interest of the parties concerned *and convert the same into money*": *Kellogg v. Slauson*, 11 N. Y. 302; to sell "within such convenient time as to him may seem meet, by public or private sale, for the best price that can be procured, *and convert the same into money*": *Benedict v. Huntington*, 32 N. Y. 219; "to take such steps for the sale and disposal of them as he may deem proper": *Meeker v. Saunders*, 6 Iowa, 68; directions to *convert into money*, and for that purpose to sell "in such manner and on such terms as they may deem most beneficial to the interests of the trust": *McCallie v. Walton*, 37 Ga. 611 (95 Am. Dec. 369); "to sell and dispose of the same *for money* upon such terms and conditions as in their judgment may appear best": *Booth v. McNair*, 14 Mich. 19; *to convert into money* "as soon as practicable and in the most beneficial manner": *Mussey v. Noyes*, 26 Vt. 462.

On the other hand, such directions as the following have been held to authorize a sale on credit and to avoid the assignment:

"To convert into money *or available means*": *Brigham v. Tillinghast*, 13 N. Y. 218; "to be converted into cash *or otherwise disposed of* to the best advantage": *Rapallee v. Stewart*, 27 N. Y. 310; to sell "upon such terms and for such prices as to him shall seem advisable": *Hutchinson v. Lord*, 1 Wis. 286 (60 Am. Dec. 381 and note); "for cash or upon credit, or partly for cash and partly upon credit, as they shall think proper": *Nicholson v. Leavitt*, *supra*.

In Virginia, while our courts have been singularly astute to avoid conveyances where the intent to *defraud* was apparent, they seem to have practically disregarded that portion of the statute which prohibits *hindering* and *delaying* creditors. The Virginia reports abound in cases where assignments have been upheld, though clearly reserving a benefit to the grantor in the way of continued use of the property assigned, and as clearly hindering and delaying creditors by unreasonably postponing, or authorizing the trustee to postpone, the conversion of the assets

into money. See *Dance v. Seaman*, 11 Gratt. 778; *Sipe v. Earman*, 26 Id. 563; *Brockenborough v. Brockenborough*, 31 Id. 580; *Young v. Willis*, 82 Va. 291; *Paul v. Baugh*, 85 Id. 955; *Norris v. Lake*, 89 Id. 513; 2 Minor's Inst. (4th ed.) 679, 680 and ca. ci.

DEED OF TRUST ON STOCK OF GOODS—Where the owner of a stock of goods executes a mortgage or deed of trust thereon to secure creditors, but retains the right, either by express terms of the deed or by a subsequent agreement, verbal or written, to remain in possession and continue to sell the goods, such a transaction is *per se* fraudulent and void as to creditors and purchasers. The reason is that such a transaction is illusory and is inconsistent with its avowed purpose—permitting, as it does, the grantor to control and enjoy the property as before and to absolutely defeat the entire security. For if he may sell a part of the goods, and pass good title, he may sell all. This power of control and disposition has met with the very general condemnation of the courts. They declare that such a pretended security is a sham and a deceit, and therefore void upon its face. Nor is the objectionable feature removed by a stipulation that the proceeds of sale shall be applied by the debtor to the purchase of other goods to keep up the security to a certain standard. *Perry v. Shenandoah Nat. Bank*, 27 Gratt. 755; *McCormick v. Atkinson*, 78 Va. 8; *Wray v. Davenport*, 79 Va. 19; *Robinson v. Elliott*, 22 Wall. 513; *Harmon v. Hoskins*, 52 Miss. 142. In a valuable note to *Peabody v. Landon* (Vt.), 15 Am. St. Rep. 912–917, will be found an excellent discussion of this subject with a full citation of authorities. As there shown, while the weight of authority and reason sustains the foregoing statement of the law, there is respectable authority to the effect that such a transaction is only *prima facie* fraudulent.

MISTAKES OF LAW—DISTINCTION BETWEEN GENERAL LAW AND PRIVATE RIGHT.—Is a mistake as to the *existence of a right* a mistake of *law*, and so without remedy, even in equity? In Anson on Contracts (2d Am. ed., p. 129), it is said, after quoting the rule *ignorantia juris haud excusat:* "But a distinction is drawn by Lord Westbury in *Cooper v. Phibbs*, L. R. 2 H. L. 170, which was a case of mistaken rights, between two senses in which the word *jus* is used with reference to this rule. 'It is said *ignorantia juris haud excusat;* but in that maxim the word *jus* is used in the sense of denoting general law, the ordinary law of the country. But when the word *jus* is used in the sense of denoting a private right, that maxim has no application. Private right of ownership is a matter of fact; it may be the result also of matter of law; but if parties contract under mutual mistake and misapprehension as to their relative and respective rights, the result is that the agreement is liable to be set aside as having proceeded upon a common mistake.'"

On the difficult question, what mistakes are, and what are not, ground for relief, Prof. Pomeroy, 2 Pom. Equity (1st ed.), secs. 843–849, offers the following rules:

Rule I. "Where the parties with knowledge of the facts, and without any inequitable incidents [as fraud, concealment, misrepresentation, undue influence, violation of confidence, etc.], have made an agreement or other instrument as they intended it should be, and the writing expresses the transaction as it was understood and designed to be made, then . . . equity will not allow a defense, or